

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 94-123
(Reopened)

March 17, 1998

PUBLIC UTILITIES COMMISSION
Investigation Into Regulatory
Alternatives for the New England
Telephone and Telegraph Company
d/b/a NYNEX

ORDER

WELCH, Chairman; NUGENT and HUNT, Commissioners

I. SUMMARY OF DECISION

In this Order we approve a stipulation (attached to this Order as Attachment 1) that allows Bell Atlantic-Maine (Bell Atlantic or the Company)¹ to increase its basic local exchange rates by a total of \$3.50 by May 30, 1999. The stipulation is in response to the Commission's recent enactment of rules that implement the Legislature's mandate that local exchange carriers, including Bell Atlantic, reduce intrastate access rate to federal interstate access rate levels or lower by May 30, 1999. By accepting the stipulation, we amend our Alternative Form of Regulation (AFOR) Order to allow these basic rate increases not provided for by the AFOR. The stipulation also contains a number of other provisions that will affect Bell Atlantic's operations until the AFOR expires on November 30, 2000.

II. PROCEDURAL HISTORY AND LEGAL BACKGROUND

On May 22, 1997, Maine's Governor King signed into law legislation that requires the Commission to establish intrastate access rates that are less than or equal to federal interstate access rates by May 30, 1999. P.L. 1997, ch. 259, codified at 35-A M.R.S.A. § 7101-B (often referred to as L.D. 812). At the time the law was enacted, Bell Atlantic's average intrastate access rates were \$0.26 per minute. Federally regulated intrastate access rates are about \$0.07. The legislation also allows the Commission to order intrastate exchange service providers to reduce their toll rates to reflect the reduction in access rates if the Commission finds that effective competition in the toll market does not exist. 35-A M.R.S.A. § 7101-B(3).

To comply with the legislation, on June 10, 1997 the Commission opened a rulemaking proposing a series of access rate reductions so

¹In August of 1997, NYNEX merged with Bell Atlantic. In this Order, all references will be to Bell Atlantic.

that rate levels would reach federal levels by May 1999.² *Public Utilities Commission, Proposed Amendment of Chapter 280 to Achieve Parity with Interstate Access Rates by May 30, 1999*, Docket No. 97-319, Notice of Inquiry; Notice of Rulemaking (June 10, 1997). Simultaneous with the rulemaking, the Commission opened an inquiry to determine whether it was necessary to review the AFOR under which Bell Atlantic is operating given the proposed access reductions and other events that have occurred since the AFOR was put in place in 1995. The Commission noted that the AFOR did not allow Bell Atlantic to recover lost access revenue as an "exogenous change."

As part of the Inquiry, the Commission announced that it would afford interested parties an opportunity to negotiate a resolution of the issues raised by the reduction in access rates and its potential impact on Bell Atlantic and the AFOR. The Commission hired a facilitator to bring interested parties together and assist the parties to reach a resolution. At the request of the facilitator, the Commission extended the original August 25 deadline several times upon reports that some progress was being made in negotiations. The facilitator identified 24 "stakeholders" who expressed an interest in participating in the negotiation process.

On October 30, 1997, the facilitator reported that certain stakeholders had reached an agreement. After the facilitator convened a meeting of all stakeholders to discuss the proposed stipulation, the stipulation was filed with the Commission for its consideration on November 7, 1997. Nine stakeholders signed the stipulation, 3 opposed it, 1 stated it did not oppose and the remaining 12 stated no position.

The Commission then held seven public witness hearings between November 24 and December 22 in various locations around the State to receive input from the public on the impact of the stipulation. In addition, between November and March 1998, the Commission received 178 letters from individuals, businesses, associations and legislators both for and against the stipulation.

On November 24, 1997, the Commission issued an order reopening the AFOR case in order to consider the stipulation. The Commission invited any interested parties to intervene. Intervention was granted to: AT&T, Maine Association of Independent Neighborhoods (M.A.I.N.), Maine People's Alliance (MPA), MCI Telecommunications

²On the same day in a separate docket, the Commission adopted a rule amendment requiring, among other changes, an immediate reduction of 20% in "originating" access rates (about 13% overall). *Public Utilities Commission, Amendment of Chapter 280, Provision of Competitive Telecommunications Services*, Docket No. 96-526, *aff'd New England Telephone v. Public Utilities Comm'n*, 1997 Me. 222, ____ A.2d ____ (1997).

Corporation (MCI), Prof. George K. Romoser, the Office of the Public Advocate (OPA), Maine Department of Education, the Maine State Library, Bureau of Information Services, State Planning Office, the Telephone Association of Maine (TAM), Neighborhood Action Coalition of Greater Portland, Sen. Sharon Treat, the American Association of Retired Persons (AARP), and Sen. John Cleveland.

In the November 24 order, the Commission required Bell Atlantic to answer a series of questions to help it evaluate the reasonableness of the stipulation. In particular, the Commission sought information to determine whether the financial consequences to Bell Atlantic and its customers of the access reduction warranted the increase in basic rates proposed by the stipulation. The parties were also afforded an opportunity to conduct discovery on Bell Atlantic.

The Commission held hearings on the stipulation on February 18, 1998. Parties opposing the stipulation presented witnesses and cross-examined witnesses supporting the stipulation. Parties waived filing briefs and instead made oral arguments at the close of the hearings. The Staff, Public Advocate and Bell Atlantic argued in favor of the stipulation. AARP, Maine Association of Independent Neighborhoods, and Maine People's Alliance opposed its adoption.

The Commission considered the stipulation at deliberations held on March 11, 1998.

III. DESCRIPTION OF THE STIPULATION

The stipulation carries out the statutory mandate, in 35-A M.R.S.A. § 7101-B, to reduce intrastate access rates to no more than the federal level by May 30, 1999. The stipulation employs a two-step process, with 40% of the reduction needed to take current access rates (estimated at approximately \$.20 per minute) to the average interstate level (estimated to be \$.053 per minute) occurring on May 30, 1998, and the remainder on May 30, 1999.

The stipulation allows basic local exchange rates to increase in a graduated three-step process by a total of \$3.50 by the time of access rate parity (provision 2). If, however, on May 30, 1999 the actual average interstate switched access rate is not within 5% of currently estimated average switched rates (e.g., \$.053 per minute), the Company is to file rate changes to basic exchange rates that reflect the revenue difference between the actual average rate and the estimated average rate.

The Company is not required to flow through the effects of recent federal deregulation and separations rules changes as exogenous cost changes in its annual AFOR filing. The two categories to which this applies are Other Billing and Collection Charges and

Pay Phones, both of which have recently been preemptively deregulated by the FCC. The Stipulation allows the Company to retain up to a total of \$6 million in increase intrastate income from these two sources (provision 5).

The stipulation also proposes to expand the definition of exogenous changes that will be allowed under the AFOR to include the effects such changes have on both revenues and expenses, whether positive or negative from the Company's perspective (provision 2.E). In addition, the Company will structure its 1998 access rate reductions in such a way as to permit competing interexchange carriers (IXCs) to offer optional toll calling plans at rates that are competitive with those of Bell Atlantic without being subject to the price/access charge "squeeze" that may occur under the present access pricing rules (provision 4).

The stipulation preserves the Commission's discretion within FCC rules with regard to the disposition of any additional federal Universal Service Fund monies that becomes available in the future (provision 6). Under provision 7, Bell Atlantic does not need explicit Commission approval before allowing special contracts to go into effect, providing the contracts comply with the service-specific pricing floor provisions of the AFOR.

The stipulation doubles, to \$2 million, the amount of potential annual penalty associated with the network reliability components of the AFOR Service Quality Index (SQI). In addition, the annual cap on the overall SQI penalty is increased from \$10 million to \$11 million for years in which the network reliability index penalty exceeds \$1 million dollars (provision 8). The stipulation calls for the Commission to waive the minimum investment condition contained in the Commission's order approving the merger of NYNEX with Bell Atlantic, but also requires the Company to provide two more years of the type of service and facility benchmarking reports required by the merger order (provision 9).

The stipulation specifies that it contains no precedents for future litigated cases and clarifies that it does not restrict any of the Commission's authority to set rates after the end of the current AFOR (provision 10).

IV. CRITERIA FOR APPROVING STIPULATIONS

In previous orders we have articulated the following criteria for approving stipulations:

- 1) whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;

- 2) whether the process that led to the stipulation was fair to all parties; and
- 3) whether the stipulated result is reasonable and is not contrary to legislative mandate.

See Consumers Maine Water Co., Proposed General Rate Increase of Bucksport and Hartland Divisions, Docket No. 96-739 (July 3, 1997); Maine Public Service Company, Proposed Increase in Rates (Rate Design), Docket No. 95-052 (June 26, 1996); and Central Maine Power Company, Proposed Increase in Rates, Docket No. 92-345(II) (Jan. 10, 1995). We have also recognized our obligation to ensure that the overall stipulated result is in the public interest. *See Northern Utilities, Inc., Proposed Environmental Response Cost Recovery, Docket No. 96-678 (April 28, 1997).*

As described below, we are satisfied that the proposed stipulation in this case meets all of these criteria.

V. DISCUSSION

A. Whether the Parties Joining the Stipulation Represent a Sufficiently Broad Spectrum of Interests

The primary purpose of this criterion is to ensure the Commission does not approve stipulations where the signing parties represent only a narrow interest. It does not mean that all parties participating in negotiations must sign a stipulation for the Commission to approve it. The Commission's rules describe the procedure the Commission will follow when some parties contest a stipulation. Chapter 110 § 744. In this instance, 24 different parties participated to varying degrees in the negotiation process. Of those, nine signed the stipulation³ and three opposed it.⁴ One did not sign the stipulation but indicated it did not oppose it.⁵ The remaining 11 indicated no position. Some parties not

³Commission Staff, Public Advocate, AT&T, Bell Atlantic, State Department of Administration and Finance, State Office of Economic and Community Development, State Department of Education, State Planning Office, and Rep. Kyle Jones.

⁴Maine People's Alliance, Sen. Sharon Treat, and AARP.

⁵Telephone Association of Maine, representing Maine's incumbent local exchange carriers.

participating in the negotiations later expressed their support or opposition.⁶

We believe that the scope of signing parties represents a sufficiently broad spectrum of interests and indicates that no one set of interests has been disenfranchised. A stipulation with the support of Commission Staff, the Public Advocate, and the utility at issue, in most instances, ensures that this standard is met. The Commission Staff and the Public Advocate are both charged by law to represent the public interest. The Public Advocate, in particular, represents the using and consuming public with priority to low income, residential, and small business where conflicts exist among those interests. 35-A M.R.S.A. §§ 1702, 1702-A. The other signing parties represent state agencies, a telephone carrier and a state legislator. In this case, the support of the OPA and Staff assures us that the public interest was adequately represented during the negotiations and is reflected in the stipulation results.

B. Whether the Process That Led to the Stipulation Was Fair

The Commission's intent from the time of the inquiry into this matter was to make this process as fair and open as possible. To that end, we appointed, for the first time, an outside facilitator to identify interested stakeholders and enhance communication between stakeholders. The negotiations, which included 24 interested parties with various degrees of experience in participating in Commission proceedings and various levels of knowledge of utility matters, presented numerous challenges for all involved. We also asked the stakeholders to initially work within a two-month time frame. We did not ask the stakeholders or facilitator to return with a unanimous stipulation.

Some parties have complained that discussions occurred among less than the entire group or that meetings were held on short notice. Some parties also noted that the complexity of the issues often meant that even when they were present at meetings, they were not able to fully participate. We have considered these concerns as well as the communications filed by the facilitator during the negotiation process, and, when taken as a whole, we believe the negotiation process was fair. There were a number of meetings where all stakeholders were invited, including a final session before the stipulation was filed with the Commission. We appreciate how difficult it is for individual citizens or citizen groups to participate in our proceedings. It is one of the purposes of the Public Advocate to ensure that the interests of such individuals are

⁶Maine Chamber and Business Alliance (for). Maine Association of Independent Neighborhoods, Neighbor Action Coalition of Greater Portland, and George Romoser (against).

represented before the Commission, and we are satisfied that the Public Advocate fully discharged his responsibility here.

In addition to what we consider to be the fundamental fairness of the negotiation process, we opened an adjudicatory proceeding after negotiations concluded to allow intervenors further opportunity to be heard on the stipulation's merits. Parties conducted discovery, filed written comments, cross-examined witnesses, and orally argued their positions before the Commission. Those contesting the stipulation were given an opportunity to be heard as required by Chapter 110 § 744.

In reaching our decision, we considered and found useful the variety of opinions expressed in our adjudicatory hearing, public witness hearings, and written communications. Upon reviewing both the negotiation process and the subsequent hearings, we believe that all parties were afforded a fair opportunity to be heard and a sufficient record was established to provide a sound basis for our decision.

C. Whether the Stipulated Result Is Reasonable and Not Contrary to Legislative Mandate

In determining whether the stipulation is reasonable, we examine whether the financial consequences to Bell Atlantic and its customers, as a result of the access rate reduction, warrant the increase in basic rates proposed by the stipulation. We also review whether this stipulation is consistent with our statutory obligations, particularly our obligation to preserve traditional flat rate local telephone service at as low a cost as possible, pursuant to 35-A M.R.S.A. § 7303(2).

1. Is the Stipulated Basic Rate Increase Reasonable?

We summarize below the considerations that have led us to conclude that the stipulation is reasonable and in the public interest.

We first consider the revenue effect from increasing basic rates. Bell Atlantic projects that the annual increase in basic exchange revenues will be approximately \$27.5 million. This is based on the number of access lines in Maine and likely growth in access lines. We believe that this is a reasonable estimate.

Next, we determine the impact on both access and toll revenues resulting from our rules and from the requirement of 35-A M.R.S.A. § 7101-B that intrastate access rates in Maine be less than or equal to interstate access rates established by the Federal Communications Commission. Bell Atlantic estimates that the revenue decrease associated with 35-A M.R.S.A. § 7101-B ranges from \$90.3 to

\$106.2 million. Bell Atlantic estimates that it will receive \$56.4 million less in access rates during the June 1999 to May 2000 period and that its toll revenues will decrease by between \$33.9 and \$49.8 million during that same time period.

The toll decrease estimate of \$33.9 to \$49.8 million is based on Bell Atlantic's assumption that it will have to reduce its retail toll rates by 30% to 40% to remain competitive in the retail toll market after other toll providers reduce their rates due to the access rate reduction. Because we intend to be very aggressive in ensuring that intrastate interexchange carriers pass through access rate reductions to end-use customers in Maine, we believe that this is a conservative assumption. If Bell Atlantic is required to pass through all access rate decreases to end-use customers, the Company would have to reduce its toll rates by as much as \$65 million in order to remain competitive.

While we believe that Bell Atlantic may need to reduce its toll rates by as much as \$65 million, which would result in a combined access and toll reduction of about \$121 million, to be conservative we will use the lower end of Bell Atlantic's \$90.3 to \$106.2 million range, as our unadjusted estimate of the access and toll effects.

We adjust this \$90.3 million estimate to reflect changes in Bell Atlantic's revenues that we believe are likely to result from stimulation of network usage. In other words, Bell Atlantic's sales will increase, to some extent, when it lowers its access and toll rates because customers may make more or longer calls due to the reduced rates, which will increase Bell Atlantic's revenues. Our access and toll rate elasticity estimates assume that access rate reductions are flowed through to end-use customers. In response to a data request from the Bench, Bell Atlantic provided an elasticity of demand study it had conducted which concluded that the elasticity of demand for intra-lata toll service was $-.2$. The economic literature in this field provides a range of estimates for demand elasticity. For the purpose of judging the reasonableness of the stipulation, we will use a more aggressive estimate of $-.4$.⁷

⁷Our -0.4 estimate of demand elasticity is supported by economic studies by Kenneth Train (1993) and by Duncan/Perry (1994). While we recognize that these studies differ from the circumstances that are before us in this proceeding, we believe that -0.4 is a useful and somewhat aggressive estimate of likely demand elasticity for Bell Atlantic. We have therefore used this -0.4 demand elasticity in producing our \$15 million estimate. The Commission took official notice of these studies in a procedural order sent to all parties on February 25, 1998. Bell Atlantic objected to the Commission relying on the two studies to calculate demand elasticities. The Commission during deliberations on March 9, 1998 rejected Bell Atlantic's

A demand elasticity of -0.4 produces access and toll revenue increases of about \$15.0 million. This reduces our estimated access and toll reductions to about \$75 million from \$90.3 million. Therefore, the stipulation produces a net benefit to ratepayers, ignoring potential "offsets," of about \$47.5 million per year (\$75 million less the \$27.5 million in revenue increase from basic rates).

Finally, we must determine whether the \$47.5 million would be reduced by other adjustments that would likely be raised in a fully litigated rate case or a comprehensive review of the AFOR. If these potential adjustments exceed \$47.5 million, we would need to carefully consider whether it would be better, on balance, to reject the stipulation.

There are a number of potential adjustments, including some small ones that are not disputed. These smaller adjustments relate to Other Billing and Collection (OB&C), payphone deregulation, depreciation, and the sale of BellCore totaling approximately \$5 million per year.

In addition, there are four significant potential adjustments relating to: (1) savings from NYNEX's merger with Bell Atlantic; (2) changes in the Company's cost of capital since the last rate case; (3) changes in productivity since the AFOR was adopted; and (4) the "digital switch" issue. While we believe that it is possible that we might make adjustments with respect to these issues if we were to comprehensively review the Company's revenue requirement or the AFOR, we conclude based on the information that is before us that the value represented by these potential offsets is far less than the benefits of the stipulation. We discuss each of these potential offsets in more detail below.

Some parties have argued that the merger savings associated with the Bell Atlantic merger should be used to offset any proposed increase. However, the costs and benefits of the merger do not occur simultaneously. Net savings from the merger are not likely to be realized until the year 2000. *New England Telephone & Telegraph and NYNEX, Proposed Joint Petition for Reorganization Intended to Effect the Merger with Bell Atlantic Corporation*, Docket No. 96-388 (Feb. 6, 1997) (Merger Order). In the current case, Bell Atlantic stated that it expected to realize an additional \$500 million of merger savings by the year 2000. This would increase Maine's share of merger savings to about \$12.6 million. We have not, however, been provided with any evidence to indicate that our earlier

objection. The Commission is not using the studies to calculate a specific elasticity but instead we use them to inform our expertise in judging the demand elasticity information provided by Bell Atlantic and to evaluate the overall revenue impact of the stipulation.

conclusion in Docket No. 96-388 concerning when such savings will be realized is now incorrect. Therefore, we will not impute any merger related savings into our analysis of the net benefits of this stipulation. As stated in our Merger Order, we will examine the net cost savings at the time of our 5-year review of the AFOR, which will take place in early 2000. We can adjust the productivity index if the AFOR continues or require rate reductions if the AFOR does not continue. *Merger Order* at 10.

Regarding possible changes in the cost of capital, Bell Atlantic argues that, based on the methodology used by the Commission in the last rate case, the Company's cost of equity capital of 12.5% has not changed. Based on discounted cash flow data that is in the record, the cost of equity capital of Bell Atlantic, other Bell Operating Companies, and other local exchange companies currently ranges from 11.95% to 12.68%. Capital asset pricing model data that is in the record suggests that the Company's cost of common equity ranges from 12.5% to 13.1%. While it is important to note that our review of the cost of common equity is more limited than would be the case in a rate case, it appears to us that the Company's current allowed cost of equity of 12.5% continues to be reasonable and therefore we will not impute any cost of capital reduction into our analysis of the net benefits of this stipulation.

A third possible adjustment would result if productivity had increased since our AFOR decision. The current productivity offset is 4.5%. In the original AFOR case, the appropriate level of the productivity offset was vigorously disputed, with estimates ranging from 2.75% to 9.0%. If we were to reopen this issue, there could again be a wide range of estimates, making it difficult to determine the appropriate productivity offset. We note that our 4.5% productivity offset is one of the highest of any state in the country. Nevertheless, if we were to raise the productivity offset to 9%, which was the high end of the range advocated in the AFOR case, the revenue impact would be about \$14.0 million.

The fourth potential adjustment relates to possible excessive payments for digital switches. In Bell Atlantic's most recent rate case, Staff argued that Pennsylvania Bell paid significantly less for comparable switching capacity than had Bell Atlantic. The Staff estimated the annual revenue requirement of the alleged overpayment to be \$7.9 million. We rejected that argument because we were unwilling to make a large rate base adjustment without a stronger evidentiary showing that the amount paid in switching costs were imprudent and unreasonable. We invited any party with specific evidence about the cost of switches in Maine to petition the Commission to investigate this issue further. The particular evidence that we sought included the comparability of the costs of switches in Maine with other switch cost data, both with respect to switch size and installation dates, and an analysis of

what was included in the switch purchase price. Since that time no party has brought forward specific information about the reasonableness of the cost of switches in Maine. For our purposes here, however, we will use \$8.0 million as our estimate of the value of this potential offset.

The net benefit of approving the stipulation, ignoring potential "offsets," is about \$47.5 million. Deducting \$27.0 million (\$5.0 million plus \$14.0 million plus \$8.0 million) produces net benefits, including potential offsets, of about \$20 million. Given that the \$27.0 million of potential "offsets" are quite uncertain, and indeed represent the high end of any probable litigated outcome, and given that our estimates of likely access and toll reductions by Bell Atlantic are conservative, we are convinced that the \$3.50 basic rate increase is reasonable when measured against potential lost revenues due to access rate reductions and other likely adjustments if we undertook a fully-litigated rate case.

2. Is the Stipulation Consistent With Our Mandate to Keep Basic Rates as Low as Possible?

35-A M.R.S.A. § 7101-B requires that, notwithstanding any other provision of law, we must establish intrastate access rates that are less than or equal to interstate access rates established by the FCC by May 30, 1999. Maine law also requires the Commission to establish rates which "will preserve traditional flat rate local service at as low a cost as possible" 35-A M.R.S.A. § 7303. This latter statute dates back to 1986 when the voters of the State of Maine passed a referendum to ban mandatory local measured service and directed the State to keep flat rate local phone service at as low a cost as possible. In response to the passage of this referendum, the Legislature enacted 35 M.R.S.A. § 80 (now 35-A M.R.S.A. § 7303) which requires the Commission to "establish rates for telephone companies which will preserve traditional flat rate local telephone service at as low a cost as possible." We have viewed this legislation as providing policy direction concerning the level of basic rates rather than creating an absolute ban on basic rate increases. See *Public Utilities Commission, Investigation Into New England Telephone Company's Cost of Service and Rate Design*, Docket No. 92-130 (April 13, 1994) Order at 11. Given these diverse statutory obligations, we must determine whether an increase in basic rates of \$3.50 over the next 2 years is reasonable.

Bell Atlantic's basic rates have been essentially unchanged since January 1986.⁸ The only increases to basic telephone

⁸On December 20, 1985, the Commission approved a stipulation Docket No. 85-159 that increased the basic rates paid by residential customers by \$1.00.

rates since that time, totaling about \$0.85, occurred in 1997 and resulted from the Commission allowing Bell Atlantic to recover costs associated with expanded calling areas pursuant to Chapter 204 of the Commission's rules. *New England Telephone & Telegraph Company d/b/a NYNEX, Request for Recovery of BSCA Shortfall Through an Increase in Basic Rates*, Docket No. 96-753 (April 15, 1997).⁹ Thus, from January 1986 to December 1997, the Commission kept basic telephone rates as low as possible by allowing only modest increases in basic rates. During that same time period, inflation, as measured by the Gross Domestic Product - Price Index (GDP-PI) rose by a cumulative total of 42%. As noted in section C.1 above, the reductions required by 35-A M.R.S.A. § 7101 will result in significant reductions in the revenue Bell Atlantic receives from toll and access service. The only alternative then is to recover at least a portion of these losses from basic exchange rates. Some parties have questioned why the entire increase is on basic rates. As explained by Bell Atlantic, currently only 6% of its revenues are derived from miscellaneous services, with 46% from basic and 48% from toll and access. Raising prices for these other services would do little to make up for revenues lost due to access reductions. Because of the pricing flexibility given Bell Atlantic in the AFOR, it is reasonable to assume that most miscellaneous services, such as Call-Waiting and Caller I.D., are already priced at levels that produce the most profit for Bell Atlantic. Raising prices higher where such services are available in a competitive market, will likely cause a decrease in net revenue rather than an increase. It follows that at least a portion of the losses from access and toll price reductions must be recovered from basic exchange rates.

We have also considered the State's policy that telephone service be universally available and specifically have considered the impact of the basic rate increase on the Company's lowest income customers. Maine's basic rates are currently lower than any state in New England. Even with the \$3.50 increase, they will be lower than the majority of New England states. Bell Atlantic's low-income customers are eligible for a "Lifeline" credit toward their basic rates. Through actions at the federal level, this amount recently increased by \$3.50 on January 1, 1998. Prior to January 1, 1998, the credit was \$7.00. Therefore, those participating in the Lifeline program will essentially be held harmless from the stipulation increase. Currently, about 100,000 Mainers are eligible for this credit, but not all eligible customers take advantage of it. We plan to increase our efforts to increase the proportion of eligible customers receiving the credit.

⁹A \$0.41 increase in basic rates went into effect in May 1997 pursuant to the delegated authority of the Director of the Commission's Technical Analysis Division. A \$0.43 increase in basic rates went into effect on September 15, 1997 pursuant to a Supplemental Order.

We conclude that allowing the \$3.50 increase in basic exchange rates while lowering access rates for toll calls is consistent with the mandates of 35-A M.R.S.A. §§ 7101-B and 7303.

3. Are the Other Stipulation Provisions Reasonable?

The major provision of the stipulation is the \$3.50 basic rate increase in recognition of the revenue losses associated by the statutorily mandated access rate decreases. The stipulation contains a number of other changes as described in section III above. We find all these changes to be reasonable as briefly discussed below.

Provision 2.E. changes the AFOR so that Bell Atlantic can seek recovery at the time of its annual filings for exogenous changes related to either costs or revenues. It is reasonable that a utility operating under a rate cap can seek recovery of unanticipated, extraordinary changes in either expenses or revenues that are outside the control of the utility.

Provision 9 allowing a waiver of the merger condition that Bell Atlantic maintain investment in Maine at levels comparable to 1992-1995 period is appropriate at this time. Since the imposition of the condition, Bell Atlantic has represented publicly that it will continue such investment and such investment can be examined in the 5-year review of the AFOR.

Provision 4 addresses a "price squeeze" situation whereby interexchange carriers have been unable to match Bell Atlantic's calling plans without absorbing a loss. Bell Atlantic commits to structuring its access charges in a manner that will allow competitors to mirror Bell Atlantic's optional calling plans. This is better than the current situation although it may not completely eliminate barriers that exist to IXCs creating their own comparable, but not identical, plans. At the conclusion of the AFOR, we can take appropriate action if this situation continues to create barriers to customers having access to a variety of economic calling plans.

Provision 7 amends the AFOR to allow Bell Atlantic to put special rate contracts into effect without prior Commission approval. This is consistent with statutory authority in 35-A M.R.S.A. § 9103 that allows us to waive the approval requirements in 35-A M.R.S.A. § 703. The change in the AFOR penalties included in provision 8 for network reliability strengthens the quality standard in the AFOR and is a positive change.

The stipulation correctly preserves the Commission's authority with regard to the disposition of any additional federal universal service funds that become available in the future. We also

note that the stipulation (provision 11) does not address the disposition of any surplus funds associated with the Maine School and Library Network.

VI. FUTURE ACTIONS

Following the conclusion of this docket, we plan to undertake three separate activities that will help ensure that ratepayers receive the benefits intended by our acceptance of the stipulation, and that will further our goal of keeping rates, both toll and basic, as low as possible.

First, as noted above, we intend to be very aggressive in ensuring that intrastate interexchange carriers will pass through access rate reductions to end-use customers, pursuant to M.R.S.A. § 7101-B(3). If effective competition is present, reductions in "wholesale" intrastate interexchange access rates will be rapidly passed through to end-use customers. If effective competition is not present, end-use customers may not benefit from access rate reductions; instead, the intrastate interexchange carriers would receive a "windfall" increase in their earnings. We intend to open an investigation to ensure that end-use customers receive lower toll rates as a result of the reductions in access rates and to ensure that carriers adhere to their public commitments to pass through access rate reductions to customers.

Second, we will undertake activities to increase participation in the Lifeline program. We will consider expanding eligibility for participating in this program and changing administrative mechanisms so that customers can more easily apply for and receive this support.

Third, we will reopen Docket No. 94-254 to determine the proper disposition of funds not expected to be used for the School and Library Network. We will solicit comments from all interested parties on the use we should make of those funds.

VII. CONCLUSION

As described above, we find that the negotiation process that resulted in the stipulation was fair and participating parties had an opportunity to be heard by the Commission in its consideration of the stipulation. We also find that the stipulation is reasonable and comports with all statutory requirements.

O R D E R I N G P A R A G R A P H

1. That the stipulation filed on November 7, 1997 and attached to this Order is approved.

Dated at Augusta, Maine this 17th day of March, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Hunt

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 97-319

November 7, 1997

PUBLIC UTILITIES COMMISSION
Proposed Amendment to Chapter 280
to Achieve Parity with Interstate
Access Rates by May 30, 1999

STIPULATION

The undersigned parties to the above-captioned proceeding hereby enter into this Stipulation: New England Telephone and Telegraph Company, doing business as Bell Atlantic-Maine ("NET" or the "Company"), the Staff of the Public Utilities Commission ("Staff"), the Office of the Public Advocate, the Department of Administrative and Financial Services, the State Planning Office and the Department of Education.

PROCEDURAL HISTORY

This proceeding was initiated by the Commission by Notice of Rulemaking/Notice of Inquiry dated June 10, 1997, ("Notice") to explore issues raised by the enactment of P.L. 1997, Chapter 259 which requires the Commission to establish intrastate access charges at or below interstate rate levels on or before May 30, 1999. The Commission observed in the Notice that changes in access rates may impact the terms and conditions of the Alternative Form of Regulation (AFOR) adopted for NET in Docket No. 94-123. The Notice propounds various issues concerning the timing and pace of the proposed access charge reductions and the

impact of such changes on the AFOR. The Commission established a deadline for Comments of August 25, 1997. By various orders issued by the Presiding Officer, however, the period for negotiations established in the Notice was extended to allow negotiations to continue.

In furtherance of the Commission's suggestion of a negotiated, comprehensive resolution of the issues, the parties have met at various times to discuss a comprehensive settlement. Such discussions were facilitated by the Commission's appointment of a moderator to structure the discussions to accommodate the views of all interested parties. As a result of such discussions the parties propose the following Stipulation.

PROVISIONS

The following provisions constitute the full and complete Stipulation of the parties hereto:

1. The Company will file tariffs for reductions to its intrastate switched access service rates as follows:

A. Tariffs for effect on or before May 30, 1998, that will reduce the Company's average intrastate switched access rate by a minimum of 40% of the reduction necessary to bring

the average access rate in effect as of July 1, 1997 to the estimated average interstate rate as of May 30, 1999 (currently estimated at approximately \$0.053 per minute, which includes a conversion of a proposed Presubscribed Interexchange Carrier Charge (PICC) into a per minute equivalent basis, but does not include any amount for the End User Common Line Charge);

B. Tariffs for effect on or before May 30, 1999, that will reduce the Company's average intrastate switched access rate to equal the average interstate rate levels (currently estimated at approximately \$0.053 per minute as described above). Also, the structure of intrastate access rates at May 30, 1999, shall reflect the interstate structure to the extent possible.

C. If on May 30, 1999, the actual average interstate switched access rate is not within 5% of the currently estimated average interstate rate (i.e., the rate including conversion of the PICC rate to a per minute

equivalent basis, is outside the range of \$0.05035-\$0.05565) the Company will file rate changes to Basic Exchange rates that reflect the revenue difference between the actual average rate and the estimated average rate (\$0.053). The Company shall not be required to implement such a change to the basic exchange rates if the amount of such change on a per access line basis is less than \$0.10 per month. In that case the Company shall propose an alternative mechanism to reconcile the access rate differential amount.

D. The effects of these rate changes will be reflected in the Actual Price Index calculation contained in the Annual Filing required by the Alternative Form of Regulation Plan.

2. All terms and conditions of the Alternative Form of Regulation adopted for NET by the Commission in Docket No. 94-123 shall remain in full force and effect, with the following exceptions:

A. The Company may file tariffs that will take effect within 30 days of the Final Order approving this Stipulation that increase all Basic Exchange rates as of the date of the Final Order by \$0.50 per month.

B. The Company may file tariffs that will take effect May 30, 1998, that will further increase all Basic Exchange Rates as of the date of the filing by \$1.00 per month.

C. The Company may file tariffs that will take effect May 30, 1999, that will increase all Basic Exchange Rates as of the date of the filing by an additional \$2.00 per month.

D. The effects of the rate changes described in 2A. above will not be reflected in the calculation of the Actual Price Index (API), except for the cumulative effect on starting ("current") prices for subsequent years' filings, as part of the AFOR adopted in Docket 94-123. The effect of the rate changes described in 2B. and 2C. above will be reflected in subsequent calculations of the API.

E. For purposes of the remaining term of the AFOR, the category of events eligible for consideration as "exogenous," as described in Section III.C.5 of the May 15, 1995, AFOR Order, shall be expanded beyond changes in NET's costs to include changes in NET's rates required to comply with any actions by Congress, the State Legislature, the Federal Communications Commission, or the Commission that impact the core revenues of NET, positively or negatively, provided such events otherwise satisfy the conditions for exogenous treatment set forth in the AFOR Order. Consistent with the May 15, 1995, AFOR Order any party may present a proposal for exogenous treatment of a particular cost or revenue change at the outset of an annual AFOR proceeding or independently in a proceeding brought under Section 1321. Any party may challenge a proposal for exogenous treatment of a particular cost or revenue change at the time of the Commission's review of that proposal.

3. The tariff filings required by Sections 1(A)(B) and (C) above and those permitted the Company in accordance with sections 2(A)(B) and (C) above shall be considered compliance filings of

the approved Stipulation, and their approval shall be delegated to the Director of Technical Analysis. Provided that the filings comply with the terms of this Stipulation and with any other applicable filing requirements contained in Title 35-A or in the Commission's Rules, such filings shall be approved. The Company will also comply with all applicable Commission rules concerning notification requirements to customers.

4. The issues identified by the Commission in Docket No. 97-411 that concern wholesale/retail access and toll rates applicable to optional toll calling plans are deemed resolved by the access rate reductions required by Section 1.A above and the Commission will close the proceeding in Docket No. 97-411 without further action. NET shall structure the access charge rate reductions required by Section 1.A to effect a change in the composite rate paid by Interexchange Carriers ("IXC") for access service in a manner that will result in an effective access rate for access minutes of use associated with an IXC's optional calling plans to be similar to the access rates implicit in the pricing of the Company's Pine Tree and Circle CallAround services. The Company will demonstrate compliance with this provision to the Staff and other interested parties prior to May 30, 1998.

5. No additional reductions to the Company's rates, beyond those described in this Stipulation, will be required as a result of the FCC's deregulation of Public Telephone Service or the jurisdictional Separations changes occasioned by FCC-imposed changes in the Other Billing and Collections account. In the event the above changes result in a net intrastate regulated operating income increase greater than \$6.0 million on an annual basis, such excess shall be treated by the Company as an exogenous event under the provisions of the AFOR and be included in the appropriate annual AFOR filing.

6. If actions by the Federal Communications Commission (FCC) have the effect of increasing the amount of support provided to reduce intrastate revenue requirements through the Universal Service High Cost Support fund or its successor, the Maine PUC retains its lawful authority to determine the disposition of those funds within the State of Maine to the extent not pre-empted by the FCC's disposition requirements.

7. In accordance with Section 9102 of Title 35-A the Commission, as part of the AFOR adopted in Docket 94-123, finds that NET may enter into special contracts with any of its customers, offering individually-designed rates and charges for any service, without the requirement of obtaining prior Commission approval under Section 703 of Title 35-A. Special

contracts remain subject to the marginal cost pricing floor requirements of the AFOR Order. In the event any special contract is challenged by any party, the Commission shall have authority to conduct an investigation, but the contract shall remain in full force and effect pending any Commission decision.

8. The Company's maximum refund obligation in any single reporting year for failing to meet the Network Reliability (Service Outages) Service Quality Index established by the Commission as part of the AFOR shall be increased from \$1 million to \$2 million. There shall be no change in the methodology for calculating any refund due for service performance that fails to meet this standard. In addition, to accommodate this increase in the maximum refund for Network Reliability performance, in any year the Company incurs a refund obligation related to Network Reliability performance results greater than \$1 million, the Company's maximum exposure for service quality refunds under the AFOR for all measured service quality objectives established in the Commission's final Order in Docket 94-123 shall be increased from \$10 million to \$11 million.

9. The Commission shall rescind the condition in its final Order approving the merger of NYNEX Corporation and Bell Atlantic Corporation (Docket No. 96-388) requiring the Company to continue investment in the infrastructure over the next four years, on

average, at the average annual level of investment achieved during the years 1992-1995. The Company will comply with the benchmarking condition in the Order requiring a demonstration of appropriate relationships between Maine and other Bell Atlantic jurisdictions, in terms of services, facilities, infrastructure and prices. The Company shall make such a demonstration annually, through and including 1999.

10. The execution of this Stipulation signifies a party's concurrence in the outcome of this proceeding, notwithstanding its views or position on any specific issues raised in the Commissions June 10, 1997 Notice of Rulemaking/Notice of Inquiry in this proceeding. The Stipulation shall not operate as precedent in any other Commission proceeding on such issues, nor be construed as an agreement by any party as to any matter of fact or law raised in this proceeding. Nothing in this Stipulation either enlarges or abridges the Commission's authority to change rates based on the resolution of any item included in the June 10 Notice, or any other revenue item or expenditure, subsequent to the expiration of the initial AFOR term.

11. The Stipulation does not address the appropriate ratemaking disposition of any potential surplus in the escrow account for Schools and Libraries established by the Commission

in its May 15, 1995 Order in Docket No. 94-254. Nothing in the Stipulation herein is intended to relieve the Company of its obligation to maintain such escrow account, nor is the Commission's jurisdiction over the use of such funds and the ratemaking disposition prior to the expiration of the AFOR of surplus funds, if any, affected by the Stipulation.

12. Should the Law Court's decision in NET's appeal of the Commission's order in Docket 96-526 require the rescission of the access rate reductions ordered by the Commission for effect on July 1, 1997, NET will immediately file tariffs to prospectively reinstate the reduced access rates. Such reinstatement will be in recognition of the basic rate increase allowed in Section 2.A of this Stipulation. In addition, the rate increases allowed in Sections 2(B) and (C) are contingent upon the coincidental implementation of the access reductions contained in Section 1 (A) and (B).

13. It is agreed and understood that the Stipulation is an integrated whole, with each provision explicitly negotiated and integrally related to every other. As such, rejection or revision by the Commission of any separate provision constitutes a rejection of the entire agreement. Should the Commission fail to approve the entire Stipulation as filed by the parties, the Stipulation shall be void and of no further effect. Under such

circumstances, neither the Stipulation, nor any part thereof, shall be offered or introduced as evidence in this or any other proceeding.

14. The parties to this Stipulation hereby waive any rights they may have under 5 M.R.S.A. Section 9055 and related Commission rules to the extent necessary to permit the Staff to discuss the Stipulation with the Commission and the resolution of this matter consistent with the Stipulation without the participation of other parties.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be duly executed by their respective attorneys or agents, each being fully authorized to do so on behalf of his/her principal.

Dated: November __, 1997

NEW ENGLAND TELEPHONE
AND TELEGRAPH COMPANY

By: _____
Donald W. Boecke
Its Attorney

STAFF OF THE PUBLIC
UTILITIES COMMISSION

By: _____

STATE PLANNING OFFICE

By: _____

DEPARTMENT OF ADMINISTRATION
AND FINANCIAL SERVICES

By: _____

OFFICE OF THE PUBLIC ADVOCATE

By: _____

AMERICAN ASSOCIATION OF
RETIRED PERSONS

By: _____

AT&T

By: _____

SENATOR JOHN J. CLEVELAND

By: _____

REPRESENTATIVE PATRICK COLWELL

By: _____

CYBERTOURS

By: _____

DEPARTMENT OF ECONOMIC AND
COMMUNITY DEVELOPMENT

By: _____

DEPARTMENT OF EDUCATION

By: _____

REPRESENTATIVE KYLE W. JONES

By: _____

VANGUARD CELLULAR

By: _____

REPRESENTATIVE CHARLES C. LAVERDIERE

By: _____

MCI TELECOMMUNICATIONS CORP.

By: _____

MAINECOM

By: _____

MAINE PEOPLES' ALLIANCE

By: _____

MAINE SCIENCE AND TECHNOLOGY
FOUNDATION

By: _____

MAINE STATE LIBRARIAN

By: _____

PINE TREE TELEPHONE AND
TELEGRAPH COMPANY

By: _____

SPRINT COMMUNICATIONS COMPANY

By: _____

TELEPHONE ASSOCIATION OF MAINE

By: _____

SENATOR SHARON ANGLIN TREAT

By: _____